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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Robert Joseph Benge,

10 Plaintiff,

11 v.

12 Corizon Health LLC, et al.,

13 Defendants.
14

No. CV-18-00349-PHX-MTL (CDB)

ORDER

15 Before the Court is Magistrate Judge Camille Bibles' Report and
16 Recommendation (R&R). (Doc. 82.) It recommends that the Court dismiss without
17 prejudice Plaintiff Robert Benge's claims against Defendant Dr. Julia Barnett. (*Id.*)
18 Plaintiff objected to the R&R. (Doc. 84.) For the reasons expressed herein, the Court
19 overrules the objection and adopts the R&R.

20 **I. BACKGROUND**

21 This lawsuit concerns the alleged insufficiency of Mr. Benge's medical treatment
22 while in prison. (Doc. 1.) Initially, Mr. Benge listed the prison doctor as Jane Doe.
23 Once he discovered her identity, Mr. Benge substituted Dr. Barnett for the Jane Doe.
24 (Doc. 30.) After adding her by name, the Magistrate Judge gave Mr. Benge a deadline to
25 complete a service packet so that the U.S. Marshal Service could serve process upon her.
26 (Doc. 55.) When he did not meet that deadline, the Magistrate Judge issued an Order to
27 Show Cause as to why the claims against Dr. Barnett should not be dismissed. (Doc. 77.)
28 He did not initially respond. The Magistrate Judge issued the R&R. (Doc. 82.) Days

1 later, Mr. Bengé filed what the Magistrate Judge construed as an objection to the R&R.
2 (Doc. 87.) That objection argued that Mr. Bengé did not realize that there was a problem
3 with service because he was homeless and did not receive information about his prior
4 attempt at service failing. (Doc. 84.) Mr. Bengé asks that the Court allow him to serve
5 Dr. Barnett now. (*Id.* at 4.)

6 **II. DISCUSSION**

7 **A. Legal Standard**

8 This Court reviews *de novo* those portions of the Magistrate Judge’s report subject
9 to an objection. 28 U.S.C. § 636(b)(1)(C). The Court “may accept, reject, or modify, in
10 whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*
11 District courts are not required to review “any issue that is not the subject of an
12 objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Concerning Mr. Bengé’s
13 objection to the R&R, the applicable rule is that “[i]f a defendant is not served within 90
14 days after the complaint is filed, the court—on motion or on its own after notice to the
15 plaintiff—must dismiss the action without prejudice against that defendant or order that
16 service be made within a specified time.” Fed. R. Civ. P. 4(m).

17 **B. Application**

18 The Magistrate Judge afforded Mr. Bengé at least two opportunities to serve Dr.
19 Barnett prior to recommending that the Court dismiss the case against her. (Docs. 22;
20 77.) Mr. Bengé did not respond to the Order to Show Cause until after Magistrate Judge
21 Bibles issued the R&R. Mr. Bengé argues in his objection that he was homeless and did
22 not know that his attempt at serving Dr. Barnett was ineffective. (Doc. 84 at 2.)

23 While Rule 4(m) of the Federal Rules of Civil Procedure requires a Court to
24 extend the time for service when a plaintiff shows good cause, Mr. Bengé has not
25 adequately explained why he did not communicate with the Court about his homelessness
26 and request an extension of time for service prior to the R&R’s issuance. This inaction
27 came despite a warning that he must notify the Court when his address changes. (Doc. 22
28 at 11.) The Court will dismiss without prejudice the claims against Dr. Barnett. If Mr.

